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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

B5

FILE:

Office: TEXAS SERVICE CENTER

Date:

JUN 25 2010

IN RE:

Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a public school district. It seeks to permanently employ the beneficiary as an English language coach. On May 4, 2007, the petitioner requested classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).¹ The petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition is January 22, 2007, which is the date the labor certification was accepted for processing by the DOL. See 8 C.F.R. § 204.5(d).

As set forth in the director's July 11, 2007 denial, the primary issues in this case are whether the beneficiary possesses: (1) the foreign equivalent of a bachelor's degree in psychology, education or English; and (2) five years of progressively responsible experience in the specialty.

The record shows that the appeal is properly filed, timely, and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.²

In order to obtain classification in the requested employment-based preference category, the petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(1), (12). See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). In evaluating the beneficiary's qualifications, U.S. Citizenship and Immigration Services (USCIS) must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term

¹Section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or aliens of exceptional ability, whose services are sought by an employer in the United States. There is no evidence in the record of proceeding that the beneficiary possesses exceptional ability in the sciences, arts or business. Accordingly, consideration of the petition will be limited to whether the beneficiary is eligible for classification as a member of the professions holding an advanced degree.

²The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

of the labor certification, nor may it impose additional requirements. See *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). See also, *Mandany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coorney*, 661 F.2d 1 (1st Cir. 1981).

The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to "examine the certified job offer exactly as it is completed by the prospective employer." [REDACTED], 595 F. Supp. 829, 833 (D.D.C. 1984). USCIS's interpretation of the job's requirements, as stated on the labor certification, must involve "reading and applying the plain language of the [labor certification]." *Id.* at 834.

Even though the labor certification may be prepared with the alien in mind, USCIS has an independent role in determining whether the alien meets the labor certification requirements. *Snappnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006). Thus, where the plain language of those requirements does not support the petitioner's asserted intent, USCIS "does not err in applying the requirements as written." *Id.* at *7.

The minimum education, training, experience and skills required to perform the offered position are set forth at Part H of the labor certification. In the instant case, the labor certification states that the position has the following minimum requirements:

- H.4. Education: Bachelor's degree in "Psychology, Education, English or any foreign equivalents."
- H.5. Training: None required.
- H.6. Experience in the job offered: 60 months.
- H.7. Alternate field of study: None accepted.
- H.8. Alternate combination of education and experience: None accepted.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: None accepted.
- H.14. Specific skills or other requirements: "5 years progressively responsible experience in coordinating, teaching, and/or implementing curriculum geared towards second language acquisition."

The record includes the beneficiary's diplomas and transcripts for a *titulo de especialista* in human resource management issued March 9, 2001; and a *titulo* of psychology issued October 4, 1996. Both degrees are from Universidad del Norte, Colombia. According to the transcript, the beneficiary completed her *titulo* of psychology in five years.

The record contains an academic credentials evaluation report, prepared by Educational Credential Evaluators, Inc. on October 12, 2001. The course-by-course evaluation states that the beneficiary's *titulo* of psychology is equivalent to a bachelor of science degree in the field of psychology. The evaluation also states that the beneficiary's *titulo de especialista* in human resource

management is equivalent to 40 credit hours towards a graduate degree.

The record also contains an evaluation of the beneficiary's education and work experience, dated June 15, 2007, by [REDACTED], Associate Professor at [REDACTED] of New York, Albany. The evaluation states that the beneficiary's *titulo* of psychology is equivalent to a bachelor's degree in psychology from an accredited institution of higher education in the United States.³

The director's denial of the petition (and subsequent motion to reopen and reconsider) concludes that the evaluations of the beneficiary's academic credentials in the record of proceeding failed to establish that the beneficiary's *titulo* of psychology is equivalent to a U.S. bachelor's degree in psychology.

U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of the letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

Given the director's issue with the academic credentials evaluation in the record, the AAO reviewed the Electronic Database for Global Education (EDGE) created by the [REDACTED] according to its website, [REDACTED] is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries." Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." According to its registration page, EDGE is "a web-based resource for the evaluation of foreign educational credentials."⁴

EDGE provides a great deal of information about the educational system in Colombia. According to

³The record contains an evaluation prepared by Dr. [REDACTED] dated April 30, 2007. The evaluation states that the beneficiary's *titulo* of psychology is "substantially similar" to a bachelor's degree in psychology from an accredited institution of higher education in the United States. On May 14, 2007, the director issued a request for evidence (RFE), stating that Dr. [REDACTED] evaluation did not state that the beneficiary's degree was "equivalent" to a U.S. bachelor's degree. In response to the RFE, the petitioner submitted Dr. [REDACTED] revised June 15, 2007 evaluation.

EDGE, there are several types of *titulo* degrees issued by educational institutions in Colombia. It was not clear from the beneficiary's diploma, transcript, or the submitted evaluations, which type of *titulo* degree the beneficiary received in psychology from Universidad del Norte, Colombia. Accordingly, the AAO issued an RFE on February 3, 2010, instructing the petitioner to provide a letter from the registrar or equivalent official of Universidad del Norte, specifically identifying which type of *titulo* degree in psychology the beneficiary received on October 4, 1996.

In response to the RFE, the petitioner submitted a letter from the Universidad del Norte registrar, accompanied by a certified translation, stating that the beneficiary obtained a *titulo profesional* of Psychology.

According to EDGE, a *titulo profesional* "represents attainment of a level of education comparable to a bachelor's degree in the United States." EDGE also notes that the *titulo de especialista* represents attainment of a level of education comparable to one to two years of graduate study in the United States.

Therefore, on appeal, the petitioner has established that the beneficiary possesses a foreign degree that is the equivalent of a bachelor's degree in psychology from an accredited institution of higher education in the United States.

The next issue is whether the beneficiary possessed "5 years progressively responsible experience in coordinating, teaching, and/or implementing curriculum geared towards second language acquisition" by the priority date of the petition, as required by the labor certification. "Progressive" is not defined by the Act or regulations. USCIS interprets the term by its plain meaning, to mean experience that increases in complexity, responsibility and relevant knowledge. In denying the petition, the director concluded that the petitioner had only established that four years of the beneficiary's experience was "progressive."

The record contains the following letters attesting to the beneficiary's employment experience:⁵

- Employment experience letter by [REDACTED], Administrative Sub-Secretary of Atlantic Government Secretary of Education Entertainment and Sports, dated September 27, 2000, stating that the government employed the beneficiary as an "*educator in the area of psychology*" from April 21, 1997 until March 16, 1998. (Emphasis added).
- Second employment experience letter by [REDACTED], Secretary of Atlantic Government Secretary of Education Entertainment and Sports, dated May 24, 2007, stating that the beneficiary "worked as an educator to children on a one on one basis" as part of a program "to address the social problem of illiteracy in rural areas" of the country.

⁵Any experience requirements must be supported by letters from employers giving the name, address, and title of the trainer or employer, and a description of the experience of the alien. 8 C.F.R. § 204.5(l)(3)(ii)(B). The submitted letters satisfy these requirements.

The letter states that the beneficiary "required supervision and mentorship in teaching the children."

- Third employment experience letter by [REDACTED] Administrative Sub-Secretary of Atlantic Government Secretary of Education Entertainment and Sports, dated November 4, 2007, stating that the government employed the beneficiary "to develop literacy skills in special needs children" from April 21, 1997 until March 16, 1998.
- Employment experience letter by [REDACTED] Administrative Service Director of Corporation Educativa del Litoral, dated May 25, 2004, stating that the company employed the beneficiary as a Director of Institutional Welfare, from March 2, 1998 to September 19, 2000. The letter states that, in this position, the beneficiary performed counseling, organized cultural and social activities, planned the annual budget, and provided orientation to new candidates. It is noted that the dates of employment on the letter overlap with the beneficiary's prior employment by two weeks.
- Employment experience letter by [REDACTED] Principal of Marymount School, Barranquilla, dated November 21, 2006, stating that the school employed the beneficiary as a fourth and fifth grade math teacher, for the August 2000 to June 2001 academic year. It is noted that the beneficiary's labor certification, signed under penalty of perjury, states that the beneficiary was employed from August 1, 2000 to August 14, 2001. The letter states that the school is a "private, Catholic, bilingual Nursery through High School college preparatory institution." The letter states that its students take an English immersion program in preschool and then "use grade level US textbooks" thereafter. It is noted that the dates of employment on the letter overlap with the beneficiary's prior employment by almost two months.
- Employment experience letter by [REDACTED] Elementary Coordinator of [REDACTED] dated May 25, 2007, stating that the school employed the beneficiary as an "entry level instructor and then as a math teacher in our English immersion" school. The beneficiary was responsible for teaching "her curriculum in English to children whose first language is Spanish." The letter states that she was employed with the school from August 2000 to June 2001.
- Employment experience letter by [REDACTED] Assistant Superintendent of the San Jose Unified School District, dated May 21, 2007, stating that the school district employed the beneficiary as a teacher from August 27, 2001 to June 16, 2004. It is noted that the beneficiary's labor certification, signed under penalty of perjury, states that the beneficiary was employed from August 15, 2001 to September 15, 2004. The letter states that the beneficiary started as an entry-level teacher at Bachrodt Academy, teaching English to Spanish-speaking students. During this first year, the letter states that the beneficiary was closely supervised by the principal and "attended numerous workshops to improve her ability to teach." After her first year, she taught English and Spanish at "the best bi-lingual immersion school" in the district, River Glen School, and participated in the school district's Beginning Teacher Support & Assessment

program, "which is a 2 year induction program for new teachers to the profession." During this time, the beneficiary was "assigned a mentor who visited and observed her classroom, reviewed her lesson plans monthly and provided feedback and assessment."

- Employment experience letter by [REDACTED] Principal of the San Jose Unified School District's River Glen School, dated February 10, 2004. The letter states that the author supervised the beneficiary for two years and that the beneficiary taught fourth graders in a bilingual immersion setting.
- Employment experience letter by [REDACTED] ELD Coordinator of the San Jose Unified School District, dated June 1, 2004, stating that the beneficiary was a teacher of all second grade subjects at Bachrodt Academy, including English Language Development, during the 2001 – 2002 school year.
- Employment experience letter by [REDACTED] Teacher of the San Jose Unified School District, dated February 27, 2004, stating that the beneficiary was a teacher at River Glen School as a fourth grade teacher in the bilingual immersion program "for the past two years."
- Employment experience letter by [REDACTED] Superintendent of the petitioner, dated May 21, 2007, stating that the petitioner employed the beneficiary as a teacher from October 1, 2004 to January 22, 2007. It is noted that the beneficiary's labor certification, signed under penalty of perjury, states that the beneficiary was employed from September 16, 2004 until January 22, 2007. The letter states that the beneficiary was originally hired to teach basic English skills on a one-on-one basis to native Spanish speaking students. After her first year, the beneficiary "moved to a step 6 teacher, a fully tenured employee teacher" with her own classroom. According to the letter, the vast majority of students taught by the beneficiary were Hispanic with minimal knowledge of English.

The approval of the instant petition hinges on the petitioner's ability to establish that the beneficiary possessed five years of progressively responsible experience coordinating, teaching, and/or implementing curriculum geared towards second language acquisition by the priority date. The letters described above are submitted by the petitioner as the evidence of the beneficiary's employment experience. The multiple inconsistencies between some of the employment letters, and between some of the employment letters and the labor certification, are outlined above. These inconsistencies were noted by the director in the denial of the petition. On appeal, counsel did not address the inconsistencies between the letters and the labor certification. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

The unresolved inconsistencies in the record undermine the reliability of the submitted letters as evidence of the nature and duration of the beneficiary's prior employment. Due to the unresolved issues with the employment experience letters in the record, it is concluded that the petitioner has not established that it is more likely than not that the beneficiary possessed five years of progressively responsible experience coordinating, teaching, and/or implementing curriculum geared towards second language acquisition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.